No. 619

In the Supreme Court of the United States

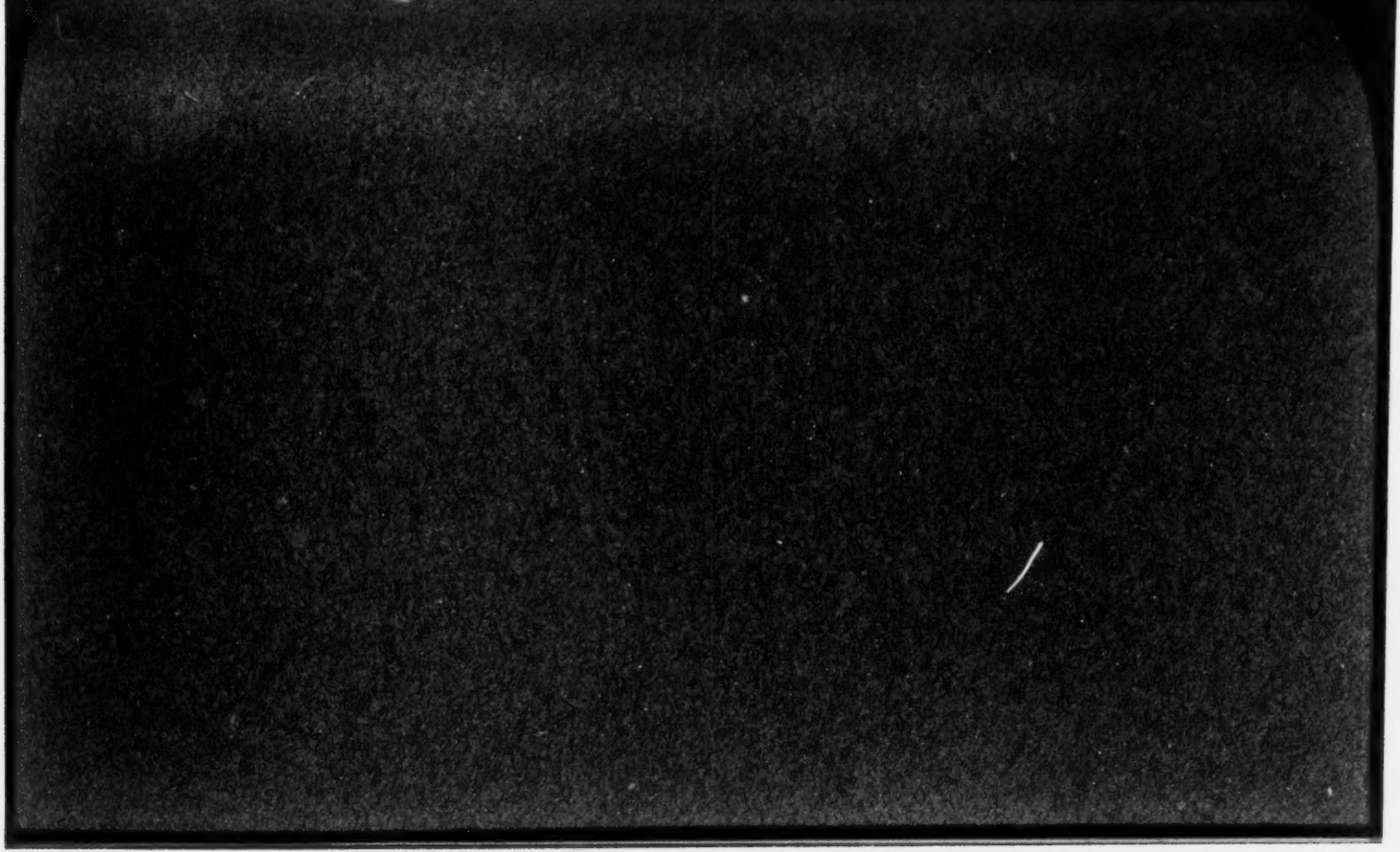
OCTOBER TERM, 1949

UNITED STATES [illegible]

HAROLD L. [illegible]

ON PETITION [illegible]
STATES [illegible]
COLUMBIA

[illegible]



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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 519

UNITED STATES EX REL. ROBERT E. LEE JORDAN,
PETITIONER

v.

HAROLD L. ICKES, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the district court (R. 21–24)[1] is not yet reported.

JURISDICTION

The judgment of the district court sought to be reviewed was entered March 3, 1943 (R. 25).

[1] Record references are to portions of the record printed as an appendix to petitioner's brief in the court of appeals.

Motion for rehearing (R. 25–26) was denied April 8, 1943 (R. 28). The petition for a writ of certiorari was filed December 1, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under the facts of this case, the Secretary of the Interior may be compelled to grant or to act upon petitioner's applications for leases under Section 17 of the Mineral Leasing Act.

STATUTE INVOLVED

Section 17 of the Mineral Leasing Act as amended by the Act of August 21, 1935, c. 599, 49 Stat. 674, 676–677 (30 U. S. C. sec. 226), provides:

> All lands subject to disposition under this Act which are known or believed to contain oil or gas deposits, except as herein otherwise provided, *may be leased* by the Secretary of the Interior * * * to the highest responsible qualified bidder by competitive bidding under general regulations. * * *
>
> * * * * *
>
> *Provided further,* That the person first making application for the lease of any lands not within any known geologic structure of a producing oil or gas field who is qualified to hold a lease under this Act

> * * * shall be entitled to a preference right over others to a lease of such lands without competitive bidding * * *. [Italics supplied.]

STATEMENT

In substance, the complaint alleges: On April 6, 1937, petitioner filed in the General Land Office at Los Angeles two applications for oil and gas leases on submerged lands off the west coast of California and not within any known geological structure of a producing oil or gas field. On June 8, 1937, the General Land Office rejected these applications on the sole ground that the Department of the Interior was without jurisdiction to grant them. On August 6, 1937, petitioner appealed to the Secretary of the Interior and has diligently and persistently urged the Secretary to take action thereon but he has failed to do so. (R. 1–4.) The complaint prays for a finding that the submerged lands are owned by the United States and are a part of the public domain, a declaration that the submerged lands are within the jurisdiction of the Secretary of the Interior for the purpose of granting oil and gas leases thereon under the Mineral Leasing Act and amendments thereto, a writ directing the Secretary of the Interior to show cause why the appeals should be further held without determination, and an order directing him to grant the leases applied for (R. 4–5).

The Secretary filed a motion for summary

judgment. The motion shows that the Secretary has suspended action on the appeals pending legislative action and judicial determination with respect to the title and jurisdiction of the United States over submerged lands. (R. 18–19.) The district court granted the motion (R. 25), and petitioner appealed to the court of appeals (R. 29), where briefs have been filed and the cause is now pending hearing and decision.

ARGUMENT

Petitioner is not entitled to the relief which he seeks. The issue has been conclusively determined against his position in *Dunn* v. *Ickes,* 115 F. 2d 36 (App. D. C.), and this Court has refused further review. 311 U. S. 698. See also *United States* v. *Ickes,* 101 F. 2d 248 (App. D. C.); cf. *United States* v. *Wilbur,* 283 U. S. 414, 419–420. The instant case presents no additional reasons of substance for certiorari, and certainly there are no considerations which call for certiorari in advance of a decision by the Court of Appeals.

Respectfully submitted.

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DECEMBER 1943.

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